

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLINTON BRANAM,

Defendant-Appellant.

UNPUBLISHED

August 23, 2005

No. 254522

Wayne Circuit Court

LC No. 03-008758

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was found not guilty of assault with intent to commit murder, MCL 750.83. Defendant was sentenced to two years in prison, but was granted a bond pending appeal. We affirm.

The victim was shot in the right shin while he was standing in a field. At the hospital, the victim described his attacker as a black male, 5 foot 9 inches tall, thirty years old, 185 pounds, dark complexioned, having low hair cut, and wearing glasses, a yellow polo shirt and khaki pants. However, one of the first officers at the scene of the shooting testified that the victim described his attacker as being a black male, 5 foot 5 inches to 5 foot 6 inches tall twenty-five to thirty years old, bald, and clean-shaven. A later arriving officer testified that the first officers on the scene described the attacker as a black male, 5 foot 6 inches to 5 foot 9 inches tall, twenty-five to twenty-seven years old, and dark complexioned. This latter description was broadcast, and an officer who had dealt with defendant as the complainant in a home invasion occurring in the vicinity earlier that day contacted officers on the scene of the shooting to say that he had been in contact with a man matching the shooter's description. At his booking, defendant was described as being 5 foot 9 inches tall and 195 pounds. Defendant is actually 6 foot or 6 foot 1 inch tall. Defendant testified that he did not shoot the victim. Defendant asserted that he had been at work until receiving a call that his home alarm system had been activated. Defendant claimed that after speaking with officers about the break-in, he rented a U-Haul and began to pack up to move. Defendant was arrested at his home. No conclusive gunshot residue was detected on defendant's person. Further, the gun that fired the shot that injured the victim and the spent bullet casing was never recovered.

Defendant first argues that there was insufficient evidence to convict him of felony-firearm. We disagree. When reviewing a claim of insufficient evidence, we view "the evidence

in the light most favorable to the prosecution and determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). We do not interfere with the jury’s role in determining the weight of the evidence or the credibility of the witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

To obtain a conviction for felony-firearm, the prosecution was required to prove that defendant carried or possessed a firearm while he was committing or attempting to commit a felony. MCL 750.227b; *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000), reh den 461 Mich 1289 (2000). However, it is not necessary that the defendant be convicted of the underlying felony. *People v Burgess*, 419 Mich 305, 310; 353 NW2d 444 (1984).

In this case, the victim identified defendant as the person who shot him, both at a pre-trial line-up and at trial. The victim’s testimony that defendant shot him is sufficient to support a felony-firearm conviction. *People v Libbett*, 251 Mich App 353, 357-358; 650 NW2d 407 (2002); *People v Perry*, 172 Mich App 609, 622-623; 432 NW2d 377 (1988). It is true, as defendant points out, that the victim was inconsistent in his description of his attacker’s height. It is also true that defendant is taller than described and was not clean-shaven at the time of the shooting. However, there were several consistent factors in each identified description that matched defendant, i.e., the shooter was a black male, dark complexioned, wearing glasses, a yellow polo shirt and khaki pants. Indeed, the initial description was accurate enough for the officer investigating the home invasion to recognize and report defendant to the officers investigating the shooting. In addition, defendant’s car matched the description of the suspect’s vehicle. Viewed in the light most favorable to the prosecution, we conclude that there was sufficient evidence for the jury to find that defendant carried or possessed a firearm while he was committing or attempting to commit a felony.

Next, defendant argues that the guilty verdict in this case was against the great weight of the evidence. While defendant asserts that the victim’s testimony contradicts the indisputable physical facts of this case, he fails to specifically explain what the indisputable physical facts are and how they are contradicted by the victim’s testimony. Defendant’s failure to properly address the merits of his assertion of error means that he has effectively abandoned the issue. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). In any event, we see nothing in the testimonial evidence that “contradicts indisputable physical facts or laws.” *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). Inconsistencies that are inherent in eyewitness testimony and the failure to discover evidence do not suffice.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens